(2)

CF0000067479

IN THE HIGH COURT OF JUDICATURE AT JABALPUR(MP).

CRIMINAL APPEAL 2055/2000.

APPELLANTS : 1. A. Mugan son of Chinna, aged about 30 years.

2. San Mugan son of Chinna, aged about 32 years.

Both residents of Gandhi Nagar Ward Jagdalpur(MP).

-Versus-

RESPONDENT. : The State of Madhya Pradesh

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE.

CONVICTION	SENTENCE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A.2055/ **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

2-3-2007:-

Shri H.C. Verma, Advocate for the appellants.

Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 12-7-2000 passed by the Special Judge, Jagdalpur, in S.T. No.192/98 whereby Special Judge after convicting accused persons namely, Ar Mugan & San Mugan for commission of offence under Section 302 of the I.P.C. for committing murder of Ganeshan, under Section 302 IPC for committing murder of Pushpa w/o San Mugan, under Section 307 IPC for attempting to commit murder of Raju, under Section 307 IPC for attempting to commit murder of Pushpa, w/o Ganeshan & under Section 307 IPC for attempting to commit murder of Laxmi, mother of Ganeshan, sentenced each of the accused for each of the offences to undergo imprisonment for life and to undergo R.I. for 3 years & pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months. They were acquitted of the charge under Section 294 of the I.P.C.

Accused Ar Mugan has died during the pendency of this appeal and as per the order dated 21-9-2005 on account of death of accused Ar Mugan his appeal has been ordered abated, therefore, appeal of accused/ appellant No.2 remains to be decided.

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आदेश पत्रक (पूर्वानुबद्ध)

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Case of the prosecution, in brief, is that Andhali (PW-1) gave Dehati Nalishi (Ex.-P/1) in the Police Station Bodhghat on 28-3-98 at about 9.30 p.m. to the effect that she is the resident of Gandhi Nagar Ward and working in Municipal Council. On that day in the evening, she and her husband Raju were at their residence. At that time, San Mugan and Ar Mugan were quarrelling with Subra of Gangamunda, therefore, her husband came out, intervened and persuaded them not to quarrel, on which San Mugan and Ar Mugan after abusing Raju in filthy language with intention to cause his death attacked Raju with knife on his cheek, gluteal region. Pushpa w/o San Mugan had also come to intervene, both the accused persons attacked Pushpa in her stomach with intention to cause her death. In the meantime, Ganeshan, Pushpa w/o Ganeshan and Laxmi had also come to separate the accused persons, the accused persons attacked them also with knife.

Receiving this report S.H.O. Police Station left for scene of occurrence, he took into possession one terricot Sari and petticoat of Pushpa under Ex.-P/2. Merg intimation Ex.-P/33 of the death of Ganeshan was given to the Station House Officer. Inquest Ex.-P/34 was prepared on the body of Ganeshan. His body was sent for post-mortem examination to the Maharani Hospital, Jagdalpur under Ex.-P/35 where Dr. Govind Singh (PW-5) conducted post-mortem, gave his report Ex.-P/3 and opined that cause of death was due to shock, excessive blood loss owing to haemorrhage and death was homicidal in nature.

Pushpa w/o San Mugan was taken to the hospital. Her injuries were examined by Dr. Vivek Joshi (PW-6), he prepared injury report Ex.-P/8 in which he noticed that there was incised wound in the size of 2" x ½"

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

at the left lower part of abdomen, 1" above and 1" inner to the left out superior iliac spine. He opined that injury was danger to the life. During treatment in the hospital, she succumbed to the injuries on 5-4-98. Therefore, merg intimation Ex.-P/19 was sent to the police station. The investigating Officer prepared inquest (Ex.-P/20) on the body of Pushpa and offence was registered under F.I.R. Ex.-P/22. The post-mortem on the body of Pushpa was conducted by Dr. Pradeep Pandey who prepared post-mortem report Ex.-P/4 and opined that cause of death is injury to the abdomen and its complications. Injured Pushpa w/o Ganeshan was examined by Dr. V.K. Joshi (PW-6). He noticed that there was incised wound in the size of 1" x 1/2 "on the right upper thigh, another incised wound in the size of 2" x ½" at the inner part of right thigh, yet another incised wound in the size of ½ " x ½" at the base of right index finger. He prepared injury report Ex.-P/5.

Injured Raju was also examined by Dr. Vivek Joshi (PW-6), he noticed 4 incised wounds and one abrasion, and he prepared injury report Ex.-P/6. Injured Laxmi was also examined by Dr. Joshi and he noticed that there was one incised wound on the left lower abdomen in the size of 2 "x ½ ". It was opined that the injury was dangerous to the life. He prepared injury report Ex.-P/7. Dying declaration (Ex.P/17) of Pushpa w/o San Mugan was recorded by the Executive Magistrate S.K. Gautam (PW-7). Weapons of offence i.e. knife and Gupti were taken into possession at the instance of the accused persons and they were examined by the doctor. In the opinion of the doctor, it was possible to cause injuries with these knife and gupti which were found on the bodies of deceased and

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आदेश पत्रक (पूर्वानुबद्ध)

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injured persons. Site plan Ex.P/23 was prepared by the Investigating Officer.

After completion of the investigation, charge sheet was filed against the accused persons in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Special Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 11 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been falsely implicated in the crime.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellants has not disputed homicidal death of deceased persons namely Ganeshan and Pushpa w/o San Mugan. Moreover, eyewitnesses namely, PW-1 Andhli & PW-4 B Muniyam and injured eyewitnesses namely, PW-2 Pushpa and PW-3 Laxmi have categorically stated that the accused persons attacked the deceased persons with knife and gupti. PW-5 Dr. Govind Singh, who conducted postmortem on the body of Ganeshan, has stated that there was incised wound on the left thigh in the size of 1 "x ½ "x ¼ ", another incised wound on the left buttock in the size of 1½" x ½" x ½", another incised wound on the left iliac crest 5" above knee in the size of 2" x 1" x muscle deep, yet another incised wound on the left knee. On opening of injury Nos. 4 and 5 it was found that muscles, nerves and femur vessels

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आदेश पत्रक (पूर्वानुबद्ध)

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were ruptured. Injury No. 4 and 5 were connected with each other. Injuries were ante mortem in nature. Cause of death of Ganeshan was haemorrhage, excessive bleeding and shock. As Dr. Pandey, who conducted postmortem on the body of Pushpa w/o San Mugan was not available, therefore, Dr. Govind Singh proved the postmortem report Ex.-P/4 prepared by Dr. Pandey. Therefore, in view of the ocular and medical evidence, it is established that death of the deceased persons were homicidal in nature.

As far as injuries sustained by Pushpa w/o Ganeshan, Laxmi and Raju are concerned, PW-6 Dr. Vivek Joshi has stated that on 2-4-98 he examined injuries of Pushpa w/o Ganeshan, there were 3 incised wounds which were caused by sharp edged weapon. He has further stated that on 28-3-98 he examined injuries of Raju, there were 4 incised wounds, injuries were caused by sharp edged weapon. He has further stated that he examined Laxmi on 28-3-98, there was incised wound on the stomach, injury was dangerous to the life. He has further stated that he examined Pushpa w/o San Mugan on 28-3-98. There was incised wound on the stomach, intestines were visible through wounds which was fatal to the life. His report is Ex.-P/8.

As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued that in this case important witness with whom initially quarrel started who is alleged to have sustained injuries i.e. Raju has not been examined. He further argued that recovery of the weapons is also doubtful, as independent witness PW-10 Subra has turned hostile. Last argument of learned counsel for the accused/appellant was that quarrel was among all

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the family members and the accused attacked in a sudden quarrel, in a heat of passion, therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate arguments advanced by learned counsel for the accused/appellant, we have perused prosecution evidence as also judgment of the trial Court. PW-1 Andhli has stated that she is the wife of Raju. On the fateful day at about 7 p.m. she and her husband were at their residence. The accused persons were quarrelling with her brother-in-law (Jeth), therefore, she along with her husband asked the accused persons not to quarrel, on which Ar Mugan attacked him with knife, thereafter accused San Mugan attacked her husband with knife on iliac crest and buttock. Thereafter, Ganeshan came and tried to intervene, on which the accused persons attacked Ganeshan with knife, as a result of which Ganeshan sustained injuries on iliac crest, stomach and private parts. Thereafter Puspa came and said that why her husband is being attacked on which accused persons attacked Pushpa wife of Ganeshan. She also sustained injuries on iliac crest. Thereafter, her sister-in-law (Jethani) Laxmi also came and said that why are they attacking on which the accused persons attacked her also with knife. As a result of injuries she became unconscious. When she started going to police Station, accused San Mugan attacked his wife with knife on the stomach. Thereafter, Pushpa and Ganeshan succumbed to the injuries. Similar is the evidence of injured witness (PW-2) Pushpa who has corroborated the above evidence and stated that on the fateful day at about 7.30 p.m. there

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was quarrel outside their house. When she along with her husband came out, they saw that the accused persons were quarreling with one Subra, thereafter, they saw that accused attacked Raju with knife and thereafter attacked Ganeshan, with knife, as a result of which he sustained injuries on stomach, iliac crest and private parts. When she went to intervene, accused San Mugan attacked her with knife on iliac crest. Thereafter, they attacked Laxmi and Pushpa wife of San Mugan. Within two hours her husband succumbed to the injuries. Injured witness (PW-3) Laxmi has also corroborated the above evidence. Eyewitness (PW-4) B. Muniyam has also corroborated the above evidence. The evidence of all these eye witnesses stands corroborated by the medical evidence of Dr. Govind Singh (PW-5) who conducted post mortem on the body of Ganeshan, prepared post mortem report Ex. P-3 as also evidence of Dr. Vivek Joshi (PW-6) who examined injuries of Pushpa wife of Ganeshan, Raju, Laxmi, Pushpa wife of San Mugan. PW-7 S.K. Gautam has stated that on 29.3.1998 he was working as Executive Magistrate, on that day he went to the Maharani Hospital where he recorded dying declaration of Pushpa wife of San Mugan which is exhibited as P-17 in which she stated that she was busy in cooking meal at her residence, at that time quarrel started. Ar Mugan started attacking his brother, on which her husband also intervened; therefore, the accused persons attacked him with knife. When she was intervening, San Mugan, her husband attacked her with knife on her stomach.

Perusal of Ex.P-17 dying declaration shows that certificate was given by Dr. Virendra Kumar Jha PW-8 who has stated that Pushpa was in a fit condition to give statement. Pushpa herself deposed against her

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husband that he stabbed her as a result of which she succumbed to the injuries after seven days. Therefore, from the ocular evidence, dying declaration of Pushpa wife of San Mugan as well as Medical evidence, it is established beyond reasonable doubt that accused persons attacked both the deceased persons as also injured Raju, Laxmi and Pushpa wife of Ganeshan. Injuries on the body of Laxmi and Pushpa wife of San Mugan were found to be dangerous to life. In cross-examination of these witnesses defence has not been able to elicit any circumstance to discredit the evidence of these witnesses. Moreover, the accused persons and injured persons are closely related. Even deceased Pushpa gave dying declaration against her husband that he stabbed her.

As far as non-examination of Raju is concerned, settled law is that it is not necessary to examine all the witnesses. Quality of evidence has to be seen and not the quantity. Even without examination of Raju the evidence of above four eyewitnesses is so cogent and clear that it leaves no manner of doubt regarding involvement of the accused/appellant in commission of crime, therefore, non-examination of Raju does not affect the prosecution case.

As far as recovery of knife and Gupti is concerned, it is true that independent witness has turned hostile but the investigating officer PW-11 Sanjay Devsthale has stated that on 30.3.1998 accused Ar Mugan gave memorandum Ex.P-29 which bears his signature. He disclosed that he has concealed the knife in the Ladi of his house, in pursuance of that he got recovered the knife which was taken into possession under Ex.P-30. He has further stated that on the same day San Mugan gave memorandum Ex.P-31 regarding knife and stated that accused has

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concealed the same near the house of Ar Mugan and in pursuance of that he got recovered the knife which was seized under Ex.P-32. These weapons were examined by PW-6 Dr. Vivek Joshi who has stated that by these weapons it was possible to cause injuries which were found on the body of deceased persons and injured persons, therefore, there is no reason to disbelieve the evidence of the investigating officer.

As far as argument of learned counsel for the appellant that the accused assaulted in a sudden fight, in a heat of passion is concerned, the evidence of all the four eyewitnesses which has been mentioned and scrutinized earlier shows that in the first instance, accused persons were quarrelling with Subra, thereafter, when Raju came they attacked him with knife. When the deceased persons namely, Ganeshan & Pushpa w/o San Mugan came, they attacked them also and other injured persons, all were arm less, they were persuading the accused persons not to indulge in quarrel, but the accused persons attacked everyone who tried to intervene and separate them from the quarrel, with knife mercilessly. Even the present accused/appellant attacked his own wife Pushpa who succumbed to the injuries sustained by her, which were caused by the accused. They used dangerous weapons and attacked on the vital part of the deceased and other persons, therefore, intention of the accused persons was writ large to cause death and attempt to cause death of the injured persons.

In the circumstances, we are of the considered opinion that the trial Court has not committed any illegality in convicting the accused for commission of offence under Section 302 of the I.P.C. for committing the murder of each of the deceased persons namely, Ganeshan & Pushpa

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	w/o San Mugan and attempting to commit the murder of Raju, Laxmi & Pushpa w/o Ganeshan. In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**
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P.T.O.